IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.1919 OF 1992

1. Shri Raishi Shivaji Chheda,
residing at Samavsaran, 2nd
floor, M.G.Road, Ghatkopar
(West), Bombay 400 086.

2. Dhirajlal Raishi Chheda,
residing and carrying on
business at Samavsaran
(old Ramniwas 'B'), M.G.Road,
Ghatkopar (West), Bombay 400 086...Petitioners

v/s.

1. The Municipal Corporation of
Greater Bombay, a body Corporate
established under Act III of the
B.M.C. Act, having its registered
office at Mahapalika Building,
Mahapalika Building, Mahapalika
Marg, V.T.Bombay 400 001.

2. Mr.Govind Ragho Khairnar,
Deputy Municipal Commissioner
(Zone V), 3rd Floor, B.M.C.Office,
'N' Ward, Jawahar Road,
Ghatkopar (East), Bombay 400 077.

3. Mr.P.A.Khalsa,
Asstt.Engineer (Building & Factories)
'N' Ward, B.M.C. Office, Jawahar
Road, Ghatkopar (East),
Bombay 400 077. .. Respondents

Mr.G.S.Bhat i/by Mr.K.M.Jawle for the petitioner.

Mr.Vinod Mahadik for the respondents.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 4th August, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard the learned counsel for the petitioner and

the learned counsel for the respondents.

2. The first petitioner was issued notices under section 351 of the Mumbai Municipal Corporation Act, 1888 in respect of the property ‘Samavsaran (old Ram Niwas ‘B’). The details of the said notices are thus-

1. SEN/TP/3 of 1988-89 of 7.7.1988 (served on 29.7.1988)
2. SEN/TP/67 of 1988-89 of 5.09.1988
3. SEN/TP/II/3 of 91-92 of 18.08.1991 (served on 27.8.1991)
4. SEN/TP/II/7 of 91-92 of 5.9.1991 (served on 14.9.1991); and
5. SEN/TP/II/9 of 91-92 of 2.12.1991;

3. The said notices were withdrawn and the communication to that effect was sent to the first petitioner on 22.1.1992.

4. The learned counsel for the petitioners submits that the respondents thereafter demolished the stalls "New Views" situate in the passage on the ground floor of the said building ‘Samavsaran’ in respect whereof the aforesaid notices were given.

5. We are informed that by virtue of the interim order passed by the learned Single Judge on 18th September, 1992, the said stalls were permitted to

be reconstructed and the petitioners, in fact, reconstructed the said stalls.

6. The learned counsel for the petitioners submits that thereafter three further notices came to be issued to the petitioners. The notice dated 11.9.1993 was given to the petitioners in respect of the reconstruction of (Mezzanine Floor) of size 19’-3" x 21’-8" plus 12’ x 25’4" by raising the height of wall by 4" with A.C. sheet roof as per the sketch shown in the notice. The second notice dated 23.11.1994 given to the petitioners was in respect of the unauthorised construction of shop admeasuring 6’-11" x 7’-5" with 9" thick brick masonry and tin sheet walls with A.C. sheet roofing alongwith weather frame of size 6’-11" x 4’. The third notice dated 23.11.1994 is in respect of the unauthorised conversion of the common passage on the ground floor into a shop by providing wooden counters (5 numbers) admeasuring (i) 10’ x 1’-6" (ii) 3’-2" x 1’-6" (iii) 5’-9" x 1’-6" (iv) 8’ x 1’-6" (v) 7’ x 1’-6" with height of 2’-9.1/2" in violation/contrary to the order of the High Court dated 18th September, 1992 in A.O. No.1919/92.

7. In our view, the three notices that have now

been issued by the respondents on 11.9.1993, 23.11.1994 and 23.11.1994 have to be taken to the logical conclusion after hearing the petitioners. These three notices do not deserve to be quashed merely because earlier notices were withdrawn.

8. We, accordingly, dispose of this writ petition by the following order:-

(i) The petitioners shall file reply to the three impugned notices dated 11.9.1993, 23.11.1994 and 23.11.1994 within eight weeks from today. Alongwith the reply, the petitioners shall produce the necessary documents to prove that the construction for which notices have been issued is not unauthorised.

(ii) The concerned authority after hearing the petitioners and on consideration of the material that may be placed by the petitioners, shall pass the speaking order and communicate the same to the petitioners.

(iii) It is clarified that with regard to

the two stalls reconstructed by the petitioners, if in accordance with the order of this court dated 18th September, 1992, no action shall be taken in respect thereof without giving due notice to the petitioners.

No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)